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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,577	09/19/2002	Bernard H Kear	Kear-2	9692

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EXAMINER

BAREFORD, KATHERINE A

ART UNIT PAPER NUMBER

1762

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 10/049,577	Applicant(s) KEAR ET AL.	
	Examiner Katherine A. Bareford	Art Unit 1762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 1,3-16 and 18-28 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached pages.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1,3-16 and 18-28.

Claim(s) objected to: _____.

Claim(s) rejected: 29-33.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Advisory Action

Continuation of Box 4 of Advisory Action Form PTOL-303:

Newly amended claims 1, 3-16 and 18-28 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claims.

The Examiner notes that applicant has amended independent claims 1 and 16 to include the allowable subject matter of dependent claims 2 and 17, respectively.

Continuation of Box 5 of Advisory Action Form PTOL-303:

The request for reconsideration has been considered but does not place the application in conditions for allowance because:

While claims 1, 3-16 and 18-28 are in condition for allowance as discussed with regard to Box 4 above, claims 29-33 are still rejected.

While applicant has proposed to amend independent claim 29 to provide that the product coating includes micron-scale particles of a hard phase material "arranged in particle aggregates fused together with the binder phase material", these claims remain rejected by Connolly in view of WO 97/18341 for the reasons given in the Final Rejection. While independent claims 1 and 16 now require hard phase material to be "arranged in particle aggregates" at the blending stage, claim 29 only requires the hard phase material to be "arranged in particle aggregates" at the final, product stage. Here, it is the Examiner's position that Connolly would provide the hard phase material in particle aggregates when making the powder mixture (see the discussion on page 3 of the Final Rejection, where it is noted that the blended powders of Connolly are first agglomerated

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by spray drying and then calcined by heat treating, which would produce "aggregates" within the meaning used by applicant). These aggregated hard phase materials would remain in that form in the product coating due to the selective melting during application (see the discussion at page 5 of the Final Rejection).

Applicant has argued in the After Final Amendment Remarks that the Examiner has refused to give the term "aggregating" the clear meaning provided in the specification and has furthermore provided an improper definition from a non-technical dictionary. The Examiner notes these arguments, however the Final Rejection is maintained. As to the use of applicant's definition of "aggregating" this Examiner has used this definition as required. The definition has been used in interpreting applicant's claims and specification, which is what applicant's own definition applies to. The Examiner has determined that in order to meet the claims, an "aggregate" within applicant's defined meaning must be provided. However, when interpreting Connolly, the Examiner is not required to apply applicant's own definition to the terminology used in Connolly, merely to determine if Connolly in fact provides material that reads on applicant's definition. Thus, the Examiner has turned to the generally understood dictionary definition to determine what is meant by the terminology in Connolly. As to the dictionary definition used by the Examiner, the Examiner understands a general dictionary to provide the meaning understood by one of ordinary skill in the art and has provided such a definition. If applicant disagrees with the Examiner's position as to what would be understood by one of ordinary skill in the art, then applicant needs to provide a demonstration that the general


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definition does not apply to the art. It is not necessary for the Examiner to start with a technical dictionary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (703) 308-0078. The examiner can normally be reached on M-F(7:00-4:30) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


KATHERINE A. BAREFORD
PRIMARY EXAMINER
GROUP 1100-1700